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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,134	07/15/2003	Mark Roby	2853	7844

7590 10/21/2004
TYCO HEALTHCARE GROUP LP
150 GLOVER AVENUE
NORWALK, CT 06856

EXAMINER

GEHMAN, BRYON P

ART UNIT PAPER NUMBER

3728

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,134

Applicant(s)

ROBY ET AL.

Examiner

Bryon P. Gehman

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-18 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/2/03, 10/31/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-11 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 4, "to maintain a predetermined suture/pledget orientation" is indefinite, as no pledget is positively defined so as to provide any orientation between a suture and a pledget.

In claim 5, the recited combination cannot be ascertained from the block per se absent a suture actually being defined as part of the apparatus. Accordingly, "first and second end portions of the suture extend beyond..." lacks antecedent basis, as no suture per se has been positively defined.

In claim 6, line 4, "block having" is ungrammatical. In line 5, "to maintain a predetermined suture/pledget orientation" is indefinite, as no pledget per se has been yet defined to provide any orientation.

In claim 10, such is double recitation, as indicated parent claim 4 already recites the structure.

In claim 18, lines 1-2, "the first and second end portions of the suture" lack antecedent basis.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Erickson (3,819,039). Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Zatarga (5,582,288). Each discloses a block (10; 18; respectively) having at least one slit (22-25; 22) to engage a portion of a suture.

As to claim 2, each discloses the at least one slit capable of maintaining a parallel relationship between end portions of a suture (the end portions being arbitrary).

As to claim 3, each discloses multiple slits in the block.

As to claim 4, each discloses a first face (15; shown upper side), a second face (16; shown lower side) and a top face (11; containing the slits).

As to claim 5, each discloses end portions of a suture extending beyond the block.

As to claim 6, Zatarga discloses an elongated suture (12) having a first end portion (at 16), a second end portion (below 20) and an intermediate portion (between 16 and 20), a block (18) having at least one slit (22) and a pledget (32) having a front wall abutting the block, the pledget including the intermediate portion of the suture.

As to claim 7, Zatarga discloses the at least one slit capable of maintaining a parallel relationship between end portions of a suture (the end portions being arbitrary).

As to claim 8, Zatarga discloses multiple slits in the block (18).

As to claim 9, the first and second end portions of the suture are substantially perpendicular to the front wall of the pledget.

As to claim 10, Zatarga discloses a first face (shown upper side of 18), a second face (shown lower side of 18) and a top face (containing the slits).

As to claim 11, Zatarga discloses end portions of the suture extending beyond the block.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (5,123,528) in view of Pinheiro (4,896,767). Brown et al. disclose a suture pledget assembly including an elongated suture (30), a needle supporting park (36) and a pledget (34), the pledget including the intermediate portion of the suture (see Figure 4), and a package (10) including a backing panel (26) defining a plurality of elongated tracks (28) and a front panel (12). Pinheiro discloses a needle park (14) comprising a block including at least one slit (19). To modify the package of Brown et al. by substituting the alternative needle park structure of Pinheiro would have been obvious in order to secure the suture needles in a manner well known in the field.

7. This application contains claims directed to the following patentably distinct species of the claimed invention: I) Fig. 1; II) Fig. 2; III) Fig. 2A; IV) Fig. 3; V) Fig. 4; and VI) Fig. 5.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no allowable claim is held generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

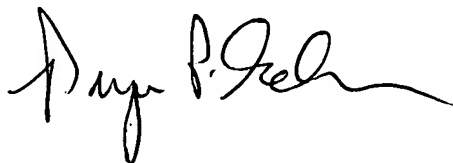
Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is presently (703) 605-1174 and effective November 9, 2004, becomes (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached presently on (703) 308-2672 and after November 9, 2004 on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-4555 effective November 9, 2004.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Bryon P. Gehman', with a stylized, flowing script.

Bryon P. Gehman
Primary Examiner
Art Unit 3728